* THE HON'BLE SRI JU

+ W.P.No.17912 of 2006

% 30-08-2006

Chanda Bhupataiah
.. Pet

Vs.

$ Agency Divisional Officer, Paloncha, Khammam District and another.
..
Respondents

< GIST :

> HEAD NOTE :

! Counsel Sri Rajmalla Reddy for petitior

^ Counsel for respond

^ Counsel for: rSerspo Pnd

? CASES REFERRED :-

1.AIR 1972 A.P.120
2.2004 (3) ALT 788 (DB)

3.(2005) 4 SCC 480

THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.17912 of 2006

ORDER:-

The matter is coming up for *admission* today. Sri Prabhakar Rao had taken notice on behalf of R.1 and made certain submissions. Sri P.V.Ramana, who had lodged Caveat on behalf of 2nd respondent, made certain submissions.

2. Sri Rajmalla Reddy, the learned Counsel representing the writ petitioner would submit that the impugned order made by the 1st respondent in Rc.No.D/1885/06 keeping the result sheet dated 18-8-2006 in abeyance while posting the main election petition on 31-8-2006 is arbitrary, unreasonable and contrary to the provisions of the A.P.Panchayat Raj Act 1994. The learned Counsel would submit that when the election petition is pending, an elected candidate cannot be restrained by virtue of such an order from assuming

office. The learned Counsel also would submit that by making such interim orders, the concerned Election Tribunal – Agency Divisional Officer had deprived the elected candidate to act as Sarpanch and virtually by virtue of this order the said Office would be kept vacant during the pendency of the Election Petition before the Election Tribunal – first respondent. The learned Counsel also placed strong reliance on the decisions of this Court i n ***GADDE VENKATESWARA RAO v. K.VENKATA RAO AND ANOTHER***[1] and ***KUMMARI RAMULU v. GANGARAM PENTA REDDY AND OTHERS***[2].

3. Sri Prabhakar Rao, the learned Counsel representing the first respondent – Agency Divisional Officer, Paloncha, Khammam District, had drawn the attention of this Court to Rule 15 of the Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules 1995 (here-in-after, in short, referred to as "Rules") and would contend that such declaration, if any, can be made only at the conclusion and while disposing of the main Election Petition and an interim order of this nature cannot be made since the effect of such Order would be keeping the elected office vacant, the same is impermissible under law.

4. Sri P.V.Ramana, the learned Counsel representing

the 2nd respondent would maintain that this is a case where further probe is not necessary since the second recount is impermissible as per the Rules. When that being so, when *prima facie* the Election Tribunal – Agency Divisional Officer, Paloncha, Khammam District is satisfied that there is an illegality making such an order is permissible. The learned Counsel placed strong reliance on Rule 7 of the Rules referred to supra and also placed strong reliance on the decision of the 3 Judge Bench of the Apex Court in ***KAILASH v. NANHKU AND OTHERS***[3]. While making further elaborate submissions, the learned Counsel would explain the meaning of Trial and the larger interpretation given in relation thereto by the Apex Court and would contend that the same is inclusive of passing such interim orders and hence a broad proposition that the Election Tribunal – Agency Divisional Officer has no such power at all to pass such interim orders cannot be laid down by this Court.

5. Heard the Counsel on record.

6. The Writ Petition is filed for a Writ of Mandamus declaring the Order dated 23-8-2006 of the first respondent in Rc.No.D/1885/2006 as illegal, without jurisdiction, arbitrary, unreasonable, contrary to the provisions of A.P.Panchayat Raj Act 1994 and the Rules

made thereunder and also violative of Articles 14 to 21 of the Constitution of India and issue a consequential direction to the first respondent herein not to give effect to the same and pass such other suitable orders.

7. It is stated by the petitioner that the petitioner is the elected Sarpanch of Karakagudem Gram Panchayat, Peenapaka Mandal, Khammam District in the elections held to the said Office on 18-8-2006. It is also stated that to that effect Declaration Form No.29 dated 18-8-2006 was given by the Returning Officer, Stage-II, Gram Panchayat Karakagudem, Peenapaka Mandal, Khammam District stating that the petitioner has been duly elected to the Office of Sarpanch, Gram Panchayat Karakagudem. It is also stated that in the said elections the 2nd respondent also contested. It is stated that the petitioner got more votes than the 2nd respondent. So the petitioner was declared elected as Sarpanch to the aforesaid Gram Panchayat. The total number of votes of the said Gram Panchayat are 2332. Out of which, polled votes are 1813. In the first counting, the petitioner got 5 votes more than the 2nd respondent and after second recounting, the petitioner got 907 votes and the 2nd respondent got 906 votes and 98 votes are declared as invalid. It is also stated that the Secretary, Gram

Panchayat Karakagudem issued a Circular on 22-8-2006 asking the petitioner and the other Ward Members of the Gram Panchayat to attend the first meeting of the Gram Panchayat on 23-8-2006. The first meeting was held on 23-8-2006 under the Chairmanship of the petitioner. Thus, it is stated that the petitioner has been functioning as Sarpanch of the Gram Panchayat aforesaid. The relevant documents also are placed before this Court. It is also stated that the 2nd respondent herein filed Election Petition for setting aside the Election as Sarpanch in Rc.No.D/1885/2006 before the first respondent and in the said Election Petition, the second respondent also filed interlocutory application for stay of Election and the first respondent by Order dated 23-8-2006 in Rc.No.D/1885/2006 erroneously ordered for keeping the results sheet dated 18-8-2006 of the election of the Sarpanch to the Gram Panchayat Karakagudem in abeyance. The said order is being questioned in the present Writ Petition on several grounds.

8. Rule 7 of the Rules reads as hereunder:-

(i) Every election petition shall be enquired into by the Election Tribunal, as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits;

Provided that it shall only be necessary for

the Election Tribunal to make a memorandum of the substance of evidence of any witness examined by him.

(ii) The Election Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:

(a) discovery and inspection;

(b) enforcing the attendance of witness and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) reception of evidence taken on affidavit; and

(f) issuing commissions for examination of witnesses, and may summon and examine sub-motu any person whose evidence appears to him to be material.

Likewise, Rule 15 of the Rules reads as hereunder:-

(i) At the conclusion of the inquiry, the Election Tribunal shall declare whether the election of the Returned Candidate or Candidates is void under Rule 12 and 13.

(ii) if he declares the election of the Returned Candidate or Candidates void, he shall further pass an order either:

(a) declaring that any other party to the petition who has under these Rules claimed the seat has been duly elected; or

(b) order a fresh election.

(iii) The order of the Election Tribunal under sub-

rules (i) and (ii) shall be final.

(iv) A copy of every order under sub-rule (i) or sub-rule (ii) shall be communicated to the Executive Authority of the Gram Panchayat, Mandal Parishad and Zilla Parishad, as the case may be, and the Election Authority.

I n ***Gadde Venkateswara Rao's case (1 supra)*** while dealing with A.P.Gram Panchayat (Conduct of Election) Rules 1964, Rule 54, it was held that the Election Court is a Special Tribunal created under Rule 49 and is not competent to function as Civil Court to exercise the powers under Civil Procedure Code. Reliance was placed on ***M.B.G.Sastry v. State of Andhra Pradesh (1971 (2) APLJ. 389) and R.Sarojini V. B.Lakshmana Rao (1967 (2) An.WR, 97).*** In ***Kummari Ramulu's case (2nd supra)*** the Division Bench of this Court while dealing with the powers of the Election Tribunal while trying Election Petition at para 10 observed as hereunder:-

"The powers which the Election Tribunal has got while trying election petition, which are vested in a Court while trying the suit under the Code of Civil Procedure, are only for discovery and inspection, enforcement of attendance of witnesses and requiring deposit of expenses, compelling production of documents, examining witnesses on oath, reception of evidence taken on affidavit and issuing Commission for examination of witnesses. Nowhere the rule makes a provision that Election Tribunal shall

have the power to permit amendment of election petition or addition, substitution or deletion of parties, which is a specific power available to a civil Court while trying a suit under the Code of Civil Procedure. Law enjoins upon trial of election petition expeditiously. That being the purpose, the Legislature in its wisdom rightly conferred specific powers on the Election Tribunal while trying election petition, which are enjoined upon a Civil Court while trying civil suit, and not all the powers exercisable by a Civil Court as provided under the Code of Civil procedure. That being the purpose, it has to be assumed that the powers, which are not mentioned in the rules, cannot be exercised by the Election Tribunal. Moreover, power to permit addition of a party after the period of limitation is such a power that can be exercised only when it is specifically conferred on the Tribunal. For that a Division Bench of this Court in ***Beerapalli Swaminatha Janaki Venkata Ramana Reddy v. Attkuri Ammi Raju and others (ILR 1971 A.P., 277 (DB),*** *while dealing with the question of power of Election Tribunal in ordering transposition of party under Order 1 Rule 10 of the Code of Civil Procedure while trying election petition under the Panchayat Samithis and Zilla Parishads Act, 1959, held that such a power is not conferred on the Tribunal and that the Tribunal can exercise only those powers which were conferred upon it."*

The Counsel for the 2nd respondent placed strong

reliance on the decision of the Apex Court in ***Kailash's case (3 supra)*** wherein the 3 Judge Bench of the Apex Court observed at paras 14 and 15 as hereunder:-

> *"In Harish Chandra Bajpai v. Triloki singh (1957 SCR 370 = AIR 1957 S.C., 444), the narrow and wider sense in which the word 'trial' is used came up for consideration of the court. In its narrow or limited sense, 'trial' means the final hearing of the petition consisting of examination of witnesses, filing documents and addressing arguments. In its wider sense, the word 'trial' indicates the entire proceeding from the time when the petition comes before the court until the pronouncement of decision. In the context of an election petition, it was held that the word 'trial' must necessarily include the matters preliminary to the hearing, such as settlement of issues, issuance of directions and the like. With the receipt of the petition in the High court, various steps have to be taken before the stage can be set for hearing it. The respondent has to file his written statement and issues have to be settled. The stages of discovery and inspection, enforcing attendance of witnesses and compelling the production of documents do not form part of the hearing in a trial governed by the CPC but precede it. For the purpose of an election petition, the word 'trial' includes the entire proceedings commencing from the time of receipt of the petition until the pronouncement of the judgment. It was held that hearing of an application under Order VI Rule 17 of the CPC for*

amending the pleadings would be a stage in the trial of an election petition.

In Om Prabha Jain v. Gian Chand (1959 Supp (2) SCR 516 = AIR 1959 S.C., 837) and another, also this Court refused to assign a restrictive meaning to the word 'trial' in regard to election petitions while interpreting Section 90 (3) of the Act as it existed prior to the 1966 Amendment. It was held that an order dismissing an election petition at the very threshold under section 90 (3) for non-compliance with Section 117 would be deemed to be an order at a stage of trial. This view was reiterated by this Court recently in Dipak Chandra ruhidas v. Chandan Kumar Sarkar (2003) 7 SCC 66), wherein it was held that to be an order passed during the trial of an election petition it is not necessary that at the time of passing of that order there must have been a full dressed trial after taking evidence of the parties; even an order dismissing an election petition summarily for non-compliance with the provisions of Section 81 or 82 or 117 is an order passed during the trial of an election petition."

9. There cannot be any dispute or controversy relating to the proposition laid down by the Apex Court in the decision referred to supra and the observations made in relation to the scope and ambit of the trial. The fundamental principle of democracy is that normally an elected candidate should be permitted to function unless and until such election is set aside or otherwise held to be

invalid by an appropriate competent Tribunal. In such cases, either directly or indirectly, such elected candidate normally not to be restrained by virtue of an order by such Election Tribunals. The preponderance of the view expressed by several High Courts inclusive of the Apex Court appear to be that normally in such cases, no interim order of this nature can be passed when certain matters in controversy may have to be adjudicated upon at the time of final disposal of the election petitions. It is true that a ground is raised that the second recounting is impermissible and this is a serious legal infirmity or an illegality. It is needless to say that this question also may have to be gone into by the Election Tribunal – Agency Divisional Officer – First respondent while disposing of the Election Petition pending before the first respondent. In view of the same, this Court is of the opinion that the impugned order cannot be sustained especially in view of the limitations placed on the Election Tribunal in making such order either direct or indirect restraint orders restraining the elected office bearer in discharging his duties to the said elected office. This Court is not inclined to express any further opinion relating to the other merits and demerits of the matter. Let the elected representative, the writ petitioner, discharge his functions as the Sarpanch until the Election Petition is disposed of finally

by the first respondent. However, in view of the urgency pleaded, the first respondent is hereby directed to dispose of the Election Petition within a period of three months from the date of receipt of the order.

10. The impugned order is hereby set aside and the Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

Justice P.S.Narayana

30th August, 2006

Note: L.R.Copy to be marked (Yes/No)

smr

---

[1] AIR 1972 A.P., 120

[2] 2004 (3) A.L.T.788 (DB)

[3] (2005) 4 S.C.C., 480